

PAY ADMINISTRATION

- 1. REASON FOR ISSUE:** To establish Department of Veterans Affairs (VA) procedures regarding critical position pay.
- 2. SUMMARY OF CONTENTS/MAJOR CHANGES:** This handbook contains mandatory VA procedures on pay administration. This chapter provides procedures for requesting and implementing critical position pay for positions that require a very high level of expertise in a scientific, technical, professional, or administrative field and are critical to the Department's mission as prescribed by 5 U.S.C. 5377. The pages in this issuance replace the corresponding page numbers in VA Handbook 5007. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5007 that is maintained on the [Office of Human Resources Management Web site](#).
- 3. RESPONSIBLE OFFICE:** The Compensation and Classification Service (055), Office of the Deputy Assistant Secretary for Human Resources Management.
- 4. RELATED DIRECTIVE:** VA Directive 5007, Pay Administration.
- 5. RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Stephen W. Warren
Executive in Charge and Chief Information Officer
Office of Information and Technology

/s/
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Assistant Secretary for
Human Resources and Administration

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other VA employees with whom he may work. The highest previous rate, if otherwise appropriate in the judgment of the authorizing official, shall be selected only if the service in which it was received meets the length and quality criteria specified in subparagraph d above.

(2) If sufficient data are not available to permit the making of a salary determination, the salary will be established initially at the lowest clearly appropriate rate of the grade. The following statement will be placed in the "Remarks" space of SF 50-B: "Pay rate subject to retroactive adjustment upon verification of prior Federal service."

3. PERSONNEL IN POSITIONS UNDER THE FWS

a. **General.** Subject to the provisions of chapter 6 of this part on grade and pay retention and paragraph 6 of this chapter on mandatory restoration, when an employee is re-employed, transferred, or reassigned in a position under the FWS, the salary may be set at any step rate of the grade which does not exceed the highest previous rate; however, if the highest previous rate falls between two step rates, the employee may be paid at the higher step rate. If the highest previous rate was earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and rate of that schedule.

b. **Reassignment.** When employees are reassigned to another position, they may be paid a rate above the minimum rate of the grade under the provisions of subparagraph a above and part II, chapter 4, of this handbook. However, employees will be given the lowest step rate of the grade, which equals or exceeds their current rate of basic pay if they are involuntarily reassigned by management for reasons which are not related to discipline or performance.

c. **Transfer and Reemployment.** A rate above the minimum of the grade may be approved under the provisions of part II, chapter 3, paragraph 5 and chapter 4, paragraph 3 of this handbook. The rate selected, however, will be that which represents organizational pay alignment, taking into account the candidate's qualifications compared to those possessed by similar employees with whom he or she may work.

4. SETTING RATES OF PAY FOR MOVEMENTS FROM NON-GENERAL SCHEDULE POSITIONS TO GENERAL SCHEDULE POSITIONS

a. The provisions of 5 CFR 531.221, permitting the use of the highest previous rate (maximum payable rate) in salary adjustments, apply equally to changes to General Schedule positions from non-General Schedule positions. [The use of the highest previous rate may be used upon reemployment, transfer, reassignment, demotion, change in type of appointment, or termination of a critical position pay authority.] Because of the difficulty of equating levels of work with salary levels for the many possible types of non-General Schedule positions, however, VA policy does not vest the right in an employee to receive the highest previous rate on such movements.

b. The determination of the rate the person will receive--up to and including the highest previous rate--shall be within the discretion of the appropriate appointing official, subject to limitations imposed by statute, Office of Personnel Management regulations and decisions of the Comptroller General. The rate shall be equitable for the employee in consideration of the length and quality of his prior Federal

CHAPTER 6. GRADE AND PAY RETENTION

1. GENERAL. The grade and pay retention provisions of this chapter apply to employees under or moving into positions under the General Schedule, the Federal Wage System, including Non-appropriated Fund employees in the Veterans Canteen Service who are subject to the Federal Wage System. Employees appointed under 38 U.S.C. 7306, 7401(1), and 7405 are eligible for pay retention only to the extent specified in paragraphs 6 and 7 below. This chapter does not cover the following categories of employees:

- a. Employees compensated under the Executive Schedule (5 U.S.C., chapter 53).
- b. Non-appropriated Fund Veterans Canteen Service employees appointed under 38 U.S.C. 7802, except those employed in a position subject to the Federal Wage System, as indicated above. **NOTE:** *All Non-appropriated Fund Veterans Canteen Service employees moving into positions subject to the Federal Wage System are eligible for grade and pay retention benefits provided they meet the criteria contained in this chapter.*
- c. Purchase and hire employees appointed under Schedule A, section 213.3127(a)(1).
- d. Employees whose appointments have definite time limitations or are designated as temporary or term.
- e. Senior-Level employees; members of the Board of Contract Appeals; Members of the Board of Veterans' Appeals, and fee basis appointees.
- [f. Employees whose pay has been reduced upon termination of a critical position pay authority under 5 CFR, part 535)].

2. GRADE RETENTION UNDER TITLE 5

- a. Grade retention is required by 5 CFR 536.201 if an employee is changed to a lower grade position in a covered pay schedule as a result of reclassification or reduction-in-force procedures. Employees must meet the appropriate eligibility requirements in 5 CFR 536.203 to be eligible for grade retention.
- b. Under the provisions of 5 CFR 536.202, VA is extending grade retention to eligible employees who are, or who might be, reduced to a grade in a covered pay schedule as a result of a reorganization (including transfer-of-function) or reclassification decision announced by management in writing. To be eligible for grade retention under 5 CFR 536.202, the position must be offered by the official having delegated appointment authority under VA Handbook 5001, General Introduction and Administration, and the employee must meet the appropriate eligibility requirements in 5 CFR 536.203. The following documentation is required when applying grade retention under this chapter:
 - (1) If the employee accepts an offer under this chapter, the following information will be documented in his/her personnel folder to record the basis for grade retention: the reason for the reorganization or reclassification; the title, grade, and series of the position being abolished, downgraded, or transferred;

3. PROCEDURES FOR ADMINISTRATION OF THE AGGREGATE LIMITATION ON COMPENSATION

a. **Making Determinations.** Using the CFR and the following table, HRM officials should determine if employees' pay has reached the aggregate limit in a calendar year. Payments over the limit (lump sum payments of excess amounts) must be deferred to the following calendar year and will count toward the aggregate limit in the new year.

b. **Lump-Sum Payment of Excess Amounts.** If an employee is due a lump-sum payment of an excess amount, HRM officials need only consider the employee's estimated basic pay in the coming year in deciding how much of the excess amount may be paid in full before any other component at the beginning of a calendar year.

Payments counted towards the limit	Payment not counted towards the limit
Basic Pay	Back pay due to an unjustified personnel action under 5 U.S.C. 5596
Locality-based comparability pay and interim geographic adjustments	Nonforeign area cost-of-living allowances under 5 U.S.C. 5941(a)(1)
Incentive awards and performance-based cash awards	Overtime pay under the Fair Labor Standards Act, as amended, and 5 C.F.R. 551
Recruitment and relocation incentives	Severance pay under 5 U.S.C. 5595
Retention incentives	Lump sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552
Supervisory differentials	Administratively uncontrollable overtime (non-discretionary entitlement in 5 U.S.C. 5545(2))
Allowances and differentials under chapter 59, title 5 U.S.C.; post differentials, physicians comparability allowances	Student loan repayments under 5 U.S.C. 5379
For title 38 physicians and dentists, fee basis and all other compensation paid under title 38 authority.	
Premium pay under 5 U.S.C. chapter 55, subchapter V	
Premium pay under 38 U.S.C. 7453 and 7454	
Special pay under 38 U.S.C. 7452 for nurse executives	
Special pay under 38 U.S.C. 7410 for pharmacist executives	
[Critical position pay paid under 5 CFR, part 535]	

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[CHAPTER 18. CRITICAL POSITION PAY AUTHORITY]**1. GENERAL**

a. The critical position pay authority allows the Secretary (or designee) to approve higher rates of pay for employees in positions that require expertise of an extremely high level in a scientific, technical, professional or administrative field critical to the Department's successful accomplishment of an important mission to the extent necessary to recruit or retain an individual exceptionally well-qualified for the critical position.

b. This authority shall only be used after determining that the position in question cannot be filled with an exceptionally well-qualified individual through the use of all other available human resources flexibilities and pay authorities, such as recruitment, relocation and retention incentives, special salary rates and above minimum entrance rates.

c. The Secretary (or designee) must review and approve each critical position pay authority request before forwarding it to the Office of Personnel Management (OPM), who in consultation with the Office of Management and Budget (OMB) will issue final approval.

2. AUTHORITY. 5 U.S.C. 5377

3. COVERAGE. To be eligible for critical position pay, the employee must be working in a position that requires a very high level of expertise in a scientific, technical, professional, or administrative field that is critical to the Department's mission and success. The categories of positions eligible for critical position pay are: General Schedule (GS) (including title 38 hybrid positions appointed under 38 U.S.C. 7401(3) or 7405), Senior-Level (SL), Senior Executive Service (SES), Executive Schedule (EX), Scientific and professional (ST); and other positions designated by the Director of OPM at the request of the Secretary.

4. EXCLUSIONS. Critical position pay may not be authorized for individuals appointed under chapters 73 or 74 of title 38 U.S.C. except as indicated in paragraph 3 above or unless approved by the Director of OPM at the request of the Secretary, or Federal Wage System positions.

5. DEFINITIONS. For purposes of this chapter, the following definitions shall apply:

a. **Critical Position.** A position for which OPM has granted authority to the head of an agency to exercise the pay setting authority provided in 5 U.S.C. 5377.

b. **Critical Position Pay Authority.** The authority that may be granted to the head of an agency by OPM under 5 U.S.C. 5377 to set the rate of basic pay for a given critical position under the provisions of that section.

c. **Critical Position Pay Rate.** The specific rate of pay established by the head of an agency for an employee in a critical position based upon the exercise of the critical position pay authority. A critical position pay rate is a rate of basic pay to the extent provided in 5 CFR 535.106.

d. **Employee.** An employee as defined in 5 U.S.C. 2105 in or under an agency.

6. RESPONSIBILITIES

a. Secretary (or designee)

(1) Approves requests for critical position pay authority at the Department level prior to submission to OPM for final approval.

(2) Authorizes critical position pay to any proposed appointee or incumbent of a position for which the critical position pay authority has been granted by OPM.

(3) Discontinues critical position pay for a given position as deemed appropriate.

(4) May make subsequent adjustments in the rate of basic pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under 5 U.S.C. 5318. Adjusted rates may not exceed the new rate for Executive Schedule level II or other applicable maximum established for the critical position. Moreover, the employee must have at least a rating of Fully Successful or equivalent, and subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to an agency's mission.

b. Deputy Assistant Secretary for Human Resources Management. Reviews critical position pay requests involving positions other than Senior Executive Service (SES) and Senior Level (SL) positions, for technical compliance and makes recommendations to the Secretary for approval. Advises the Secretary and other key officials on the regulations, policies and procedures contained in this chapter.

c. Executive Director, Corporate Senior Executive Management Office. Advises senior leadership on the regulations, policies and procedures applicable to critical position pay authority and ensures that covered SES and SL employees are aware of the policies governing the payment of critical position pay. Reviews critical position pay requests for SES and SL positions for technical compliance. Coordinates with the VA Executive Management Board's Position Management Committee and makes recommendations to the Secretary.

d. Administration Heads, Assistant Secretaries, and Other Key Officials. Administration Heads, Assistant Secretaries, and Other Key Officials at the Deputy Assistant Secretary level or higher are the recommending officials and must concur on all requests for employees in their organization. All requests must be initiated at the facility director or national program level or higher and for Veterans Health Administration facilities, have the concurrence of the Veterans Integrated Service Network Director.

e. Human Resources Officers. Advises facility management on the regulations, policies and procedures contained in this chapter and ensures that covered employees are aware of the policies

governing the payment of critical position pay.

7. CRITICAL POSITION PAY AUTHORITY

a. Critical position pay authority may be used to fill positions that require expertise of an extremely high level in a scientific, technical, professional, or administrative field which is critical to the Department's successful accomplishment of an important mission and only to the extent necessary to recruit or retain an individual who is exceptionally well-qualified for the critical position.

b. The rate payable for critical position pay may not be less than the rate of basic pay, including any locality based comparability payments under 5 U.S.C. 5304 or special rate supplements under 5 U.S.C. 5305 and 38 U.S.C. 7455, that would otherwise be payable for the position if it were not designated as critical. If critical pay authority is granted, the Secretary (or designee) may set pay initially at any amount up to the rate of pay for Level II of the Executive Schedule. In exceptional circumstances, pay may be set up to Level I of the Executive Schedule, but setting such pay would require detailed justification to support the higher pay. A rate above Executive Level I is only established in rare circumstances and requires the written approval of the President.

c. Critical position pay requests must be submitted in writing only after it has been determined that the position in question cannot be filled with an exceptionally well-qualified individual through the use of other human resources flexibilities and pay authorities (e.g. recruitment, relocation and retention incentives, special salary rates, above minimum entrance rates).

d. Requests covering multiple positions must include a list of the positions in priority order. If granted, the Secretary (or designee) may determine whether it is appropriate to extend the authority with respect to any proposed candidate or incumbent of the position, including individuals who are temporarily promoted or detailed into a position that has been approved for critical position pay. Such an extension does not apply to an SES member who is detailed to another position, or an employee who is detailed to an SES position.

e. SES members are under a pay-for-performance system where pay must be set based on the employee's performance and/or contribution to VA's performance. Therefore, requests covering SES positions are expected to be limited.

f. Once granted by OPM, the critical position pay authority may continue to be used for authorized positions as long as the need exists. Usage of the authority will be monitored by OPM through agency level annual reporting requirements and the authority associated with a given position may be terminated if after consulting with OMB, OPM determines that critical position pay is no longer needed for a particular position.

8. REQUESTS FOR CRITICAL POSITION PAY

a. **Contents of Request.** Each request for critical position pay must include the following:

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- (1) Name of incumbent/appointee (or “Vacant” if the position has not yet been filled);
- (2) Position title, pay plan, occupational series and grade/level/pay band (SES);
- (3) Position appointment authority (for SES positions, provide the appointment authority for any incumbent);
- (4) Geographic location of the position;
- (5) Current salary of the position or incumbent(s);
- (6) Length of time the incumbent has been in the position or length of time the position has been vacant;
- (7) Written evaluation of the need to authorize the position as critical which fully describes the position; explains the level of expertise required for the position including the duties and types of work to be performed and the context within which the position operates; describes the range of positions and qualification requirements that characterize the occupational field (e.g. engineering, information technology, finance) including those that require extremely high levels of knowledge and expertise; the rates of pay reasonably and generally required in the public and private sectors for similar positions, and the availability of individuals who possess the qualifications to do the work required by the position;
- (8) Documentation with appropriate supporting data of the Department’s experience and, as appropriate, the experience of other organizations, in efforts to recruit or retain exceptionally well-qualified individuals for the position or for a position sufficiently similar with respect to the occupational field, required qualifications, and other pertinent factors to provide a reliable and supportable comparison;
- (9) Detailed assessment as to why the position could not, through diligent and comprehensive recruitment efforts and without the use of the critical position pay authority, be filled within a reasonable period with an individual who could perform the duties in a manner sufficient to fulfill the Department’s mission. This assessment must include a justification as to why other human resources flexibilities and pay authorities such as recruitment, retention and relocation incentives under 5 CFR, part 575 are not an effective alternative to critical position pay;
- (10) Explanation regarding why the position should be designated as a critical position and made eligible for a higher rate of pay under this chapter within its organizational context (i.e., relative to other positions in the organization) and, when applicable, how it compares with other critical positions in the Department. Include an explanation as to how perceived inequities among employees (e.g., situations in which employees in positions designated as critical would receive higher rates of pay than their peers, supervisors, or other employees in positions with higher-level duties and responsibilities) will be addressed;
- (11) Documentation of the effect on the successful accomplishment of important Departmental

missions if the position is not designated as a critical position, including an explanation and justification for OPM and OMB to expedite processing of the request in cases where the situation is so critical as to warrant expedited processing;

(12) Any additional information deemed appropriate to assist in demonstrating that higher pay is needed to recruit or retain an employee for a critical position;

(13) Copy of the position description and qualification standard for the critical position (this documentation is not needed for an Executive Schedule position);

(14) The desired rate of basic pay and justification to show that such a rate is necessary to recruit and retain an individual exceptionally well-qualified for the critical position. Requests to set critical position pay above the rate for Level I of the Executive Schedule may be established in rare circumstances and require written approval by the President;

(15) SES and SL requests for critical position pay based on retaining an individual exceptionally well-qualified for the critical position must include:

(a) Documentation of monetary awards including Performance Awards, Special Contribution Awards and Presidential Rank Awards received during the previous 24 months;

(b) Explanation of the incumbent's qualifications and how he/she meets or exceeds the position qualifications; and

(16) Requests for SES positions require an explanation regarding how the position exceeds the Pay Band 1 criteria and characteristics.

b. **Procedures.** Requests for critical position pay will be routed through the applicable Under Secretary or Assistant Secretary to the Office of Human Resources Management, Compensation and Classification Service (055), for technical review prior to submission to the Secretary and OPM. Requests for SES and SL positions should be sent to the Corporate Senior Executive Management Office (CSEMO) for review and coordination with the Executive Management Board Position Management Committee prior to submission to the Secretary and OPM. Final decisions on critical position pay authority requests will be made jointly by OPM and OMB. OPM will advise VA as to whether the request is approved and when the critical position pay authority becomes effective for the requested position(s).

9. SETTING AND ADJUSTING RATES OF BASIC PAY FOR A CRITICAL POSITION

a. The rate of basic pay for a critical position may not be less than the rate of basic pay, including any locality-based comparability payments established under 5 U.S.C. 5304 or special rate supplement under 5 U.S.C. 5305 or 38 U.S.C. 7455 (or other similar payment or supplement under other legal authority) that would otherwise be payable for the position had it not been designated as critical.

b. If critical position pay is granted for a position, the Secretary (or designee) may set pay initially at any amount up to the rate of pay for Level II or Level I of the Executive Schedule, whichever is authorized by OPM. Under 5 CFR 535.104(c) written approval of the President is required for any rate above Level I of the Executive Schedule. If critical position pay authority is granted for a position, the Secretary may determine whether it is appropriate to exercise the authority with respect to any proposed appointee or incumbent of the same position.

c. The Secretary may make subsequent adjustments in the rate of basic pay for a critical position each January at the same time general pay adjustments are authorized for Executive Schedule employees under 5 U.S.C. 5318. Such adjusted rates may not exceed the new rate for Executive Schedule Level II or other applicable maximum established for the critical position. A subsequent adjustment can only be made if the employee has a rating of at least “Fully Successful” or equivalent. Subsequent adjustments must be based on labor market factors, recruitment and retention needs, and individual accomplishments and contributions to the Department’s mission.

d. Employees receiving critical position pay are not entitled to locality-based comparability payments under 5 U.S.C. 5304, special rate supplements under 5 U.S.C. 5305 or 38 U.S.C. 7455 or other similar payments or supplements under other legal authority.

e. Critical position pay authority must be terminated if conditions no longer warrant payment of the critical position pay rate. If the Department discontinues critical position pay for a given position (on its own initiative or through termination by OPM and OMB under 5 CFR 535.103(d)), the employee’s rate of basic pay will be set at the rate to which the employee would be entitled had he or she not received critical position pay, unless the employee is eligible for a higher payable rate under the General Schedule maximum payable rate rule in 5 CFR 531.221 and the Department chooses to apply that rule.

10. TREATMENT AS BASIC PAY. Critical position pay paid under this chapter is considered basic pay for the purposes of computing civil service retirement benefits, life insurance, thrift savings plan, lump-sum annual leave payments, work injury compensation claims, severance pay, continuation of pay and recruitment and retention incentives. A critical position pay rate is considered basic pay for all purposes (e.g., recruitment, relocation, retention incentive calculations), any applicable premium pay, except in the application of any saved pay or pay retention provisions (5 U.S.C. 5363) or application of any adverse action provisions (5 U.S.C. 7512).

11. ANNUAL REPORT

a. On an annual basis (by January 31st), the Department must submit a report to OPM on the use of the critical position pay authority for the previous calendar year containing cumulative information on the following:

(1) Name, title, occupational series, pay plan and grade/level of each employee receiving a higher rate of basic pay under this authority;

(2) The annual rate or rates of basic pay paid to each employee in a critical position during the

preceding calendar year;

(3) The beginning and ending dates of such rate(s) of basic pay, as applicable;

(4) The rate or rates of basic pay that would have been paid had the employee not received critical position pay. This includes what the rate or rates of basic pay were, or would have been without critical position pay at the time critical position pay is initially exercised and any subsequent adjustments to basic pay that would have been made if critical position pay had not been exercised; and;

(5) Whether the authority is still needed for the critical position(s).

b. Administrations, field facilities, CSEMO and the Central Office Human Resources Service (COHRS) will be notified annually of the due date of the report. The Compensation and Classification Service (055) will collect, aggregate and prepare the report for submission to OPM.

12. REFERENCES

- a. 5 CFR, part 535
- b. 5 U.S.C. 5377
- c. 5 U.S.C. 5304
- d. 5 U.S.C. 5305]